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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/583,030

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Lieven Lefebvre

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FOLEY AND LARDNER LLP

SUITE 500

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EXAMINER

MUROMOTO JR, ROBERT H

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

07/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/583,030

Applicant(s)

LEFEBVRE ET AL.

Examiner

BOBBY H. MUROMOTO JR

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-16 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 27 March 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Goerz et al., US patent 5472769.

'769 discloses a multi-layered ballistic resistant fabric for garments, "one layer made of light weight, durable fibers 11-15 knitted to similar fibers 16-19 in a random knitted arrangement so as to resist lateral motion therebetween when a pointed object contacts the layer of material. The fibers 11-19 are preferably made from aramid, such as the aramid sold under the trademark Kevlar. Such fibers produce a fabric which is extremely light in weight, highly durable with great strength resistance.

As best seen in FIG. 4, individual layers 10 of the knitted/woven material are secured together in order to provide a multi-layer fabric. The method of attaching individual layers 10 together is conventional, and may include adhesive bonding, thermal bonding, fabric stitching or any other

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technique presently used in the art. The phantom lines 28 illustrated in FIG. 4 illustrate one rectilinear pattern for the attaching seams (col. 3, lines 44-col. 4 line 20)."

"The anti-penetration capability of the invention can also be enhanced by the use of a deflection layer such as those illustrated in FIGS. 5-8. "

"With reference to FIG. 5, one form of such a deflection layer comprises a **fine wire mesh 30 with individual strands 31 fabricated from a high strength metal wire such as stainless steel wire** or titanium wire (col. 4, lines 46-53)."

Mesh is an open woven fabric as shown in the figures.

Since layers are disclosed as stitched, the layers would all be 'attached' as claimed.

Figures clearly show all metallic fibers "spread over the surface" as claimed.

Regarding newly added "and located on a surface of one of said sheets", the applicant states in remarks dated 3/27/2008:

"Goerz discloses a garment that includes a **fabric 10 with knitted fibers made of aramid**. See Goerz at col. 3, lines 44-52. Goerz discloses that the penetration resistance of the material can be increased by including an **additional fiber component wound about or interspersed with the main fiber component**. **This additional fiber component can be selected from a group of relatively high strength and high surface friction flexible materials, such as metal fibers,**

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See col. 2, lines 15-23, of Goerz. Goerz also shows in Figure 2 high friction, high strength supplemental fibers 21 wound about aramid fibers 20. See Figure 2 and col. 3, lines 58-63. Goerz also discloses that the fibers can be interwoven with the fabric 20. See col. 3, lines 63-64. The garment can further include a fine wire mesh 30. See Goerz at col. 4, lines 49-52.”

Contrary to applicant's assertions, the citations above from Goerz do disclose, "a plurality of elongated metal elements", that are "attached" ('wound about', 'interspersed', 'interwoven', and an additional mesh would clearly have metal fibers 'attached on a surface') and "located on a surface of at least one of said sheets", as presently required by the instant claim language.

With respect to the recited 'resiliency' functional limitations, the MPEP is clear, "“PRODUCT AND APPARATUS CLAIMS - WHEN THE STRUCTURE RECITED IN THE REFERENCE IS SUBSTANTIALLY IDENTICAL TO THAT OF THE CLAIMS, CLAIMED PROPERTIES OR FUNCTIONS ARE PRESUMED TO BE INHERENT

Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not (MPEP 2112.01).”

Since all claimed structure is disclosed, all claimed functional limitations are considered to be inherently disclosed until otherwise proven by applicant.

Metallic fibers inherently add resiliency to any structure including the armor panels disclosed above.

Response to Arguments

Applicant's arguments filed 3/27/2008 have been fully considered but they are not persuasive.

Newly added limitations regarding 'surface location' and arguments regarding claim 1 have been clearly addressed in the newly presented portion of the rejection above.

Since these are the only arguments and amendments presented the rejection remain and is considered to be proper.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOBBY H. MUROMOTO JR whose telephone number is (571)272-4991. The examiner can normally be reached on 8-530, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert H Muromoto, Jr./

Primary Examiner, Art Unit 3765